the tenancy yield up a storehouse, or a stable, or cow-house. In other words, a tenant from year to year has an implied obligation to use the premises in a tenantlike manner. In *Horsefall* v. *Mather*,(6) an action of assumpsit against a tenant at will, Gibbs C.J. said that such a tenant was not liable for general repairs but added that the law implied a duty to use the premises in a husbandlike manner. Both these cases were referred to in the judgment of *Marsden* v. *Edward Heyes Ltd., supra.* In that case the demised premises consisted of a shop on the ground floor and a dwelling house on the top floor. It was found that the premises had been gutted by the tenants and there was nothing left except the four walls of the building; all the internal fixtures and fittings and some of the walls and grates had been removed. All the three learned judges were of the unanimous opinion that the tenants had completely altered the character of the demised premises and allowed the owner's claim. Bankes L.J. was of the opinion that "the law recognises a contractual obligation upon the defendants as tenants towards their landlord in reference to the user to which the premises were to be put and the extent to which they were to be maintained and repaired". He held the view that the facts led to the clear conclusion that there was a breach of that obligation. Scrutton L.J. held that "there is an implied contract of a tenant to use the premises in a tenant-like manner and to deliver them up at the end of the term". Atkin L.J. put the matter succintly at page 8:

> "....but no doubt the tenant would also be liable upon an obligation express or implied in the contract of tenancy. The contract of tenancy in the present case was oral, and contained no express obligation on the part of the tenants relating to their user of the premises, and so the question is whether there is an implied term in an oral agreement for a yearly tenancy that the tenant will abstain from such acts as to the defendants have committed in this case. But the cases....show that there is an obligation upon the tenant to use the premises in a tenant-like or, which is the same thing, a husband-like manner. It follows that he is under a continuing obligation to repair acts which would amount to voluntary waste and which involve a breach of the obligation to use the premises in a husbandlike manner."

When the tests as laid down in these cases are applied to the instant case it is clear that there is an implied contractual obligation upon the appellant to use the said premises in a tenant-like manner, and failure to observe it amounts to a breach of the obligation. Applying this principle of law to the facts as found by the learned magistrate it is without doubt that damage was done to the premises and therefore her conclusion was correct. The question being a question of law, the fact that the learned magistrate failed to indicate it in her judgment is not fatal to this appeal.

The final argument propounded by the appellant was that the learned magistrate had no jurisdiction to adjudicate upon the case as it involved a question of title. The appellant contended it was the case for the respondent that she was the legal owner of the premises while his case was based on the contention that the husband of the respondent was the legal owner. To my mind, such proposition was based on a misconception of the facts. The evidence disclosed that the respondent owned the premises but it was her husband who managed it, so much so that rent receipts were made in his name; on the strength of these facts it is not surprising to see that all negotiations for the letting of the premises were made by the husband, no doubt on behalf of his wife, and in this sense he was her agent. If this fact is not overlooked, a clear perspective is obtained. It appears to me perfectly clear that that was the position and therefore no question of title really comes into play. In the circumstances I am of the opinion that the judgment under appeal must be affirmed with costs to the respondent.

Appeal dismissed.

Solicitors: *Shearn, Delamore & Co.; Sothi & Ang.*

MALAYAN COMMERCIAL BANKS' ASSOCIATION v. NATIONAL UNION OF BANK EMPLOYEES (No. 1)

[I.A.T. (Sir George Oehlers, Chairman; R.R. Chelliah, Chooi Mun Sou, Hanafiah bin Hussain and Koh Kim Leng, Members) September 2, 1965]

[K.L. — Industrial Arbitration Tribunal Case No. 3 of 1965]

Industrial relations — Promotion and transfer — Managerial rights.

This trade dispute was referred to the tribunal by the Minister. The bank contended that its staff were challenging its right as management to effect a promotion and that its managerial rights to recruit and promote were unassilable. The bank sought directions by the tribunal that the bank had an exclusive discretion and responsibility in the discharge of its functions as an employer to promote and a discretion and responsibility in the discharge of its functions as an employer to transfer staff in accordance with the exigencies of its business. The attention of the tribunal was drawn to the following provisions of a collective agreement dated October 12, 1962 and made between the union and the Malayan Commercial Banks' Association:—

> *"Promotion*: Grade III employers are eligible to be considered for promotion to grade II on completion for their 8th year in grade III in the salary structure. When a bank considers a grade III 8th year employee will not merit promotion to grade II on completion of that year of service he will be informed accordingly. Each bank undertakes to re-examine any individual case which the union considers requires further investigation. Grade II employees will be eligible to be considered for promotion to grade I, as and when vacancy exists in a senior post of responsibility. It is agreed that each bank will review and decide on promotion annually.

When vacancies in the clerical staff occur consideration will be given by the bank to non-clerical employees eligible for the post.

Transfer of Staff: Transfers between branches in the same town limits are to be effected by each bank as may be necessary. Where it is necessary to transfer any employee outside such limits, other than with the respective employee's consent, such transfer will not be carried out without the bank giving sympathetic consideration to cases where undue hardship will be caused.

In either event the employee's promotion opportunities will be considered."

Opinions and Award: (1) it was not disputed that under the present arrangements the bank had a discretion to promote and transfer but (as agreed by counsel for the bank) in all cases of promotion and transfer, the discretion to promote and transfer should be exercised *bona fide;*

(2) on the question of the discretion of the bank to transfer, the tribunal were of the opinion that it would make for good employer and employee relations if the provisions of the relevant clause of the collective agreement on transfers were in principle made applicable to all grades of the staff;

(3) on the question of the discretion of the bank to promote, the tribunal were of the opinion that under the present arrangements between the bank and the staff, and subject to the provisions of the relevant clause of the collective agreement on promotions which by its nature applied exclusively to clerical and non-clerical staff, the bank had exclusive and absolute discretion to promote its own staff;

(4) the tribunal however were of the opinion and being of that opinion awarded that in matters of promotion when an officer felt aggrieved he should have a right to appeal to the management, and to be heard on the grievance, bearing in mind that the ultimate discretion to promote remains with the bank.

INDUSTRIAL ARBITRATION DISPUTE.

Eusoffe Abdoolcader (*R. C. Hoffman* with him) for the Bank.

M. S. Dhoss for the Union.

AWARD

The Reference

This matter was on the 23rd June, 1965 referred to the tribunal by the Minister of Labour under the provisions of paragraph (4) of Regulation 4 of the Essential (Arbitration in the Essential Services) Regulations, 1965 (hereafter referred to as "the Regulations") in respect of the dispute between the Hongkong & Shanghai Banking Corporation (hereafter referred to as "the bank") and the National Union of Bank Employees, Federation of Malaya (hereafter referred to as "the union").

2. On the one hand, the dispute, as reported on the 3rd June 1965, under the provisions of paragraph (1) of regulation 4 to the Minister by the Malayan Commercial Banks' Association on behalf of the bank, arose from the promotion of one Mr. Chow Mun Hup from staff officer to the post of regional officer, in protest against which the union had taken or threatened to take certain industrial action which, in the view of the association had for their objective, the coercion of the bank and thus was in contravention of the regulations.

3. On the other hand, the dispute as reported on the 10th June, 1965 under the aforesaid provisions to the Minister by the union (a report made after discussions, on receipt of the report made by the association had been opened with the parties by officials of the Ministry) arose over the failure of the bank to promote Messrs. Yeoh Teck Chye and A. M. John as regional officers, the union contending that whilst this dispute was being dealt with on reference to the Commissioner for Industrial Relations under an agreed grievance procedure, the situation had been aggravated by the promotion of Mr. Chow Mun Hup to the post of regional officer.

4. The Minister in his reference to the tribunal intimated that as a result of the discussions held between the Minister of Labour and the parties, the industrial action reported by the association had been discontinued since the 14th June, 1965.

5. The Minister went on to indicate that the dispute between the parties involved certain principles held firmly by both parties. On the one hand, the bank contended that its staff were challenging its right as management to effect a promotion to the rank of regional officer and that its managerial rights to recruit and promote are unassailable. On the other hand, the union contended that the bank by denying the promotion of Messrs. Yeoh Teck Chye and A. M. John were victimising them because of their union membership and thereby interfering with the right of freedom of association of its employees.

The Bank's Case

6. In its statement of case, the bank referred to two demands made by the union as follows:—

(1) that Messrs. Yeoh Teck Chye and A. M. John, holding the posts of staff officers in the bank, should be promoted to the grade of regional officers, the union alleging that the officers were denied promotion because of their union membership.

(2) that the promotion of Mr. Chow Mun Hup to the grade of regional officer should be cancelled, or alternatively that the bank should promote all officers in the grade of staff officers to the grade of regional officer. Coupled with this demand was a demand that the transfer of one of its staff officers, Mr. Boey Seng Ngow from its Kuala Lumpur office to its office in Petaling Jaya, in consequence of Mr. Chow's promotion, should be revoked and Mr. Boey returned to the Kuala Lumpur office.

7. The bank maintained that the matter of promotion of its officers was not a matter for negotiation and made the following submissions:—

(1) That in the matter of the promotion of Mr. Chow Mun Hup, the bank was exercising its exclusive discretion and responsibility in the discharge of its function as an employer to select and promote such

of its own employees as it considers suitable for promotion.

(2) That in the matter of the transfer of Mr. Boey Seng Ngow, the bank was exercising its discretion and responsibilitly in the discharge of its function as an employer to transfer staff in accordance with the exigencies of its business, a principle which the union has acknowledge in clause 16 of the collective agreement.

(3) That in demanding the promotion of Mr. Yeoh Teck Chye and Mr. A. M. John, the union was attempting to interfere with and to frustrate the exercise of the bank's discretion and responsibility mentioned in submission (1) above to select and promote such persons as it considers suitable.

(4) That the actions of the union and its members in the matters in dispute with the bank follow a consistent pattern designed to interfere with and frustrate the exercise by the bank of its discretion and responsibility in the matter of recruitment, selection, promotion and transfer of its own staff.

8. In the premises the bank sought an award to the following effect:—

(i) A direction that the union, its officials and members shall not do any act the purpose of which is to frustrate the promotion of Mr. Chow Mun Hup.

(ii) A direction that the union, its officials and members shall not take any action the purpose of which is to prevent or frustrate the transfer of Mr. Boey Seng Ngow to its office in Petaling Jaya.

(iii) A direction that the bank has an exclusive discretion and responsibility in the discharge of its functions as an employer to recruit, select and promote its own staff.

(iv) A direction that a discretion and responsibility rests with the bank in the discharge of its function as an employer to transfer staff in accordance with the exigencies of its business.

The Union's Case

9. In its statement of case the union alleged that Mr. Yeoh Teck Chye had in fact been promoted to the post of regional officer and made the following submissions:—

(i) That Mr. Yeoh Teck Chye is the substantive holder of the post of regional officer in the bank as from 9th February, 1965.

(ii) That Mr. Yeoh had been denied the pay and allowances and other conditions of service that are related to and are commensurate with the post of regional officer.

10. Based on the facts and evidence the union requested the tribunal "to make an award to Mr. Yeoh for all pay and allowances and other conditions of service due to him as substantive holder of and discharging the duties and responsibilities of regional officer at the bank since 9th Feburary, 1965".

The Issues

11. It was apparent from the statements of cases, that the union by confining its case to the question of promotion of Mr. Yeoh and by asserting that Mr. Yeoh had in fact been promoted to the post of regional officer, had abandoned its original demands as listed by the bank (paragraph 6 above).

12. It was further made apparent from the statements of cases and during the hearing that the matters before the tribunal resolved themselves into two main issues, one an issue of principle involving the bank's and the union's rights in relation to the promotion and transfer of staff (hereafter referred to as the "bank's case") and the other an issue of fact in relation to the question of the promotion of Mr. Yeoh Teck Chye (hereafter referred to as "the union's case").

14. On the 15th July 1965 Mr. Dhoss for the union applied for a date late in September for the hearing of the dispute as Mr. Yeoh Teck Chye was away from the country and would not be returning until the middle of September. Counsel for the bank objected to such a lengthy postponment. It was decided that the bank's case should be heard before Mr. Yeoh's return with a proviso that if during the hearing of the bank's case Mr. Yeoh's presence was found to be necessary, the hearing would be adjourned.

The Hearing of the Bank's Case

15. The bank's case came up for hearing on the 11th August, 1965.

16. At the outset it was agreed by counsel for the bank and by Mr. Dhoss for the union that the main issue of principle in relation to promotion and transfer of staff was whether the bank had an exclusive or absolute discretion to promote and transfer its own staff. In respect of this issue the bank had, by its statement of case, sought directions by the tribunal that the bank had an exclusive discretion and responsibility in the discharge of its functions as an employer to promote and a discretion and responsibility in the discharge of its functions as an employer to transfer staff in accordance with the exigencies of its business. Paragraph 8(iii) and (iv) above). The question of the exclusive discretion and responsibility of the bank to recruit and select (paragraph 8(iii) above) was raised in so far as it related to promotions and the tribunal consider it unnecessary to make any separate finding in relation thereto.

17. On the desire of the bank for an award giving directions that the union should not do any act, the purpose of which was to frustrate the promotion of Mr. Chow Mun Hup or to prevent or frustrate the transfer of Mr. Boey Seng Ngow (paragraph 8(i) and (ii) above), counsel for the bank intimated that the bank did not seek injunctions, as such, prohibiting such acts. It is a matter for doubt as to whether a dispute as to whether certain acts amount to "proscribed industrial action", is a trade dispute within the meaning of the regulations. Such acts, if they amounted to "proscribed industrial action" would be dealt with under regulation 5 which prohibits same and under regulation 6

which makes such acts offences punishable by fine or imprisonment. In fact, no such dispute was referred by the Minister to the tribunal (see paragraphs 4 and 5 above). The tribunal makes no finding in the matter.

18. Adverting to the main issue of principle as to whether the bank had an exclusive or absolute discretion to promote and transfer its own staff (paragraph 16 above), counsel for the bank maintained that the bank had an unfettered discretion to promote and transfer and any attempt by the tribunal to lay down principles or rules governing promotion or transfer would in effect, fetter such discretion. Counsel agreed that in all cases such discretion should be exercised *bona fide* but that the test of *bona fides* could only be made in a particular case alleging the lack of *bona fides*. In this case there had been an allegation of victimisation, but that allegation had been abandoned by the union and therefore the question as to whether the bank acted *bona fide* was not before the tribunal.

19. The attention of the tribunal was drawn to a collective agreement, dated 12th October, 1962 between the union and the bank. The relevant clauses on promotion and transfer read as follows:—

Promotion: Grade III employees are eligible to be considered for promotion to grade II on completion of their 8th year in grade III in the salary structure. When a bank considers a grade III 8th year employee will not merit promotion to grade II on completion of that year of service he will be informed accordingly. Each bank undertakes to re-examine any individual case which the union considers requires further investigation. Grade II employees will be eligible to be considered for promotion to grade I, as and when a vacancy exists in a senior post of responsibility. It is agreed that each bank will review and decide on promotions annually.

When vacancies in the clerical staff occur consideration will be given by the bank to non-clerical employees eligible for the post.

Transfer of Staff: Transfers between branches in the same town limits are to be effected by each bank as may be necessary. Where it is necessary to transfer any employee outside such limits, other than with the respective employee's consent, such transfer will not be carried out without the bank giving sympathetic consideration to cases where undue hardship will be caused.

In either event the employee's promotion opportunities will be considered.

20. Counsel for the bank maintained that the collective agreement applied only to all clerical and non-clerical employees of the bank and did not cover grades of staff above clerical grade, which in the case of the bank are classified as supervisory grade, staff officer grade and regional officer grade. Counsel however, intimated that certain clauses of the agreement were by analogy and for convenience applied to grades of staff above clerical grade.

21. Mr. Dhoss for the union argued that the agreement covered all employees of the bank including supervisor, staff officer and regional officer grades.

22. The tribunal considered that the issue thus raised was irrelevant to the main issue before them and consequently that it was unnecessary to make any finding thereon, particularly as it is understood that the agreement has in fact expired and a new agreement is being negotiated. The tribunal however, express the hope that in any new agreement between the parties all terms used therein will be adequately and specifically defined.

23. Mr. Dhoss for the union while admitting that there was a discretion vested in an employer to promote a person of his choice put forward the proposition that as the agreement was silent as to the bank's right to promote, the bank cannot claim that it had the exclusive discretion to promote. In view of the finding in the previous paragraph no decision need be given to this proposition but the tribunal nevertheless feel constrained to say that they cannot agree with the proposition enunciated.

24. Mr. Dhoss for the union conceded that, under the present arrangements the union need not be consulted before promotion, but alleged that in the past, by practice the union had always been allowed to make representations when aggrieved; the union wishes this practice to continue. Mr. Dhoss further conceded that the ultimate discretion to promote was with the bank. The union's complaint is that in the case of the promotions which are the subject matter of the dispute, the union was not permitted to be heard.

The Award in the Bank's Case

25. After carefully considering the statements of cases and the submissions made on behalf of both parties the tribunal make the following findings and award:—

(1) On the question of the discretion of the bank to transfer, the tribunal are of the opinion that, whether or not the provisions of clause 16 of the collective agreement were applicable, it would make for good employer and employee relations if those provisions were in principle made applicable to all grades of the staff. It has not been alleged that the bank has not in fact followed those provisions, so far as possible, in affecting transfers of its staff.

(2) (a) On the question of the discretion of the bank to promote, the tribunal are of the opinion that, under the present arrangements between the bank and the staff, and subject to the provisions of clause 4 of the agreement which by its nature applied exclusively to clerical and non-clerical staff, the bank has an exclusive and absolute discretion to promote its own staff. (b) The tribunal, however, are of the opinion and being of that opinion, award that in matters of promotion when an officer feels aggrieved he shall have a right to appeal to the management, and to be heard on his grievance, bearing in mind that the ultimate discretion to promote remains with the bank.

The Hearing of the Union's Case

26. Counsel for the bank agreed that if the tribunal found that Mr. Yeoh had in fact been promoted to be regional officer all benefits attached to the post should be accorded to Mr. Yeoh.

27. Mr. Dhoss thereupon raised no objection to a separate award being made in respect of the bank's case.

28. The hearing of the union's case was fixed for hearing on 13th, 14th & 15th September, 1965.

MALAYAN COMMERCIAL BANKS' ASSOCIATION v. NATIONAL UNION OF BANK EMPLOYEES (No. 2)

[I.A.T. (Sir George Oehlers, Chairman; Chooi Mun Sou, Hanafiah bin Hussain and Koh Kim Leng, Members) October 26, 1965]

[K.L. — Industrial Arbitration Tribunal Case No. 3 of 1965]

Industrial dispute — Abandonment of original claims — Definition of "promotion" — Claim for pay and allowance etc. — Allowance for officiating — Union representation — Right of association.

This award dealt with a trade dispute as referred to the tribunal by the Minister wherein the union contended that the bank by denying the promotion of the two employees named were victimising them because of their union membership and thereby interfering with the right of freedom of association of its employees. The union in its statement of case asserted that one of the two employees so named was the substantive holder of the post of regional officer in the bank as from February 9, 1965 and that he had been denied the pay and allowance and other conditions of service that were related to and were commensurate with the post of regional officer. The union requested the tribunal to make an award to the employer concerned for all pay and allowances and other conditions of service due to him as substantive holder of and discharging the duties and responsibilities of regional officer at the bank since February 9, 1965. The union contended that the word "promotion" had two connotations, firstly the actual appointment to a higher post and secondly, after such an appointment, the granting of privileges etc. attached to the post.

Opinions of Findings: (1) it was apparent from the statement of cases that the union by confining its case to the question of the the promotion of one of the employees and by asserting that that employee had, in fact, been promoted to the post of regional officer had abandoned its original demands;

(2) the second interpretation sought to be placed by the union on the word "promotion" cannot possibly be accepted, more especially in the light of the plain language used in the documents referred to;

(3) the tribunal found that the employee was not promoted as claimed and accordingly decided that the employee was not the substantive holder of any post of regional officer in the bank and consequently he was not entitled to the pay and allowances and other conditions of service that would have been due to him as substantive holder of and discharging the duties and responsibilities of a regional officer;

(4) the tribunal considered that an appropriate allowance should be paid to the employee for officiating as a regional officer and suggested that the amount of such allowance should be negotiated between the bank and the union within a period of one month. Failing agreement within that period, either party would be at liberty to come before the tribunal again;

(5) it was the undoubted right of workers to establish and join unions or associations of their own choice, but questions arose firstly as to whether or not there should be some prohibition against persons who aspire to be appointed and promoted to managerial positions being or continuing to be officers or members of any particular union and secondly should that question be answered in the affirmative, what positions would be considered to be managerial position in each particular instance. The tribunal was not called upon to answer those questions but expressed the hope that during the negotiations then in progress in relation to the union's representation of the staff of the bank, the points referred to and raised by the award would be included amongst the matters discussed.

INDUSTRIAL ARBITRATION DISPUTE.

Eusoffe Abdoolcader (*R. C. Hoffman* with him) for the Bank.

M. S. Dhoss for the Union.

AWARD

This trade dispute between the Hongkong & Shanghai Banking Corporation (hereinafter referred to as "the bank") and the National Union of Bank Employees, Federation of Malaya (hereinafter referred to as "the union") which was on the 23rd of June, 1965 referred to the tribunal by the Minister for Labour under the provisions of paragraph (4) of Regulation 4 of the Essential (Arbitration in the Essential Services) Regulations, 1965, resolved itself into two main issues, one an issue of principle on the question of the bank's and the union's rights in relation to the promotion and transfer of staff (hereinafter referred to as "the bank's case") and the other an issue of fact in relation to the question of the promotion of Mr. Yeoh Teck Chye (hereinafter referred to as "the union's case").

The Bank's Case

2. The bank's case was heard on the 11th of August, 1965 and on the 2nd of September, the tribunal handed down its award in relation thereto, there being no objection raised by Mr. Dhoss, representing the union, to a separate award being made in respect of the bank's case. (See paragraph 27 of that award).

The Union's Case

3. The union's case was heard on the 14th of September, 1965, 15th September, 1965 and 5th October, 1965.

4. This award is in relation to the union's case.

The Reference

5. As appears in paragraph 3 of the award relating to the bank's case, the dispute as reported on the 10th of June, 1965 to the Minister